

**REMARKS/ARGUMENTS**

***Amendments in General / Claim Rejections - 35 U.S.C. § 112***

1. Claims 1-19 were rejected by Examiner under 35 USC § 112. The claims have been corrected to clearly show that instances of ergonomic belt, duty belt and ergonomic duty belt mean ergonomic duty belt.
2. Claim 1 has been amended to include the limitation that the semi rigid member is parallel to the longitudinal axis of the belt. As this limitation only clarifies the limitations of the claimed subject matter, no new matter has been added.
3. Claim 12 has been amended to include the limitations of the plates have a flat top and beveled side edges connected to the belt by a square pedestal. As these limitations are included in the drawings as shown, no new matter has been added.
4. Claim 11 was rejected by Examiner under 35 USC § 112. The figures and specifications have been modified to clarify the claimed subject matter.
5. Claim 17 was rejected by Examiner under 35 USC § 112 for failing to clarify what the requirements of a standardized rail system are. Claim 17 has been cancelled.
6. Claim 21 was rejected by Examiner under 35 USC § 112. Claim 21 has been amended to clearly indicated that claim 21 depends upon claim 20.
7. Claim 9 has been amended to depend upon claim 2 instead of claim 1. As the limitations of claim 2 also included the limitations of claim 1, no new matter has been added.
8. The Examiner rejected to the drawings under 37 CFR 1.83(a) for failing to show the outer belt connected to the ergonomic belt of claim 3. Figures 2 and Figures 5 have been labeled to more clearly show the ergonomic belt of claim 3. As the amendments have to the figures only clarify structures already present and claimed in the application, no new matter has been added.
9. Examiner objected to the drawings under 37 CFR 1.83(a) for failing to show the outer belt with a plurality of attachment devices on it as claimed in claim 6. Figure 1 shows an outer belt with a plurality of attachment devices. As the amendments have to the figures only clarify structures already present and claimed in the application, no new matter has been added.

10. Examiner objected to the drawings under 37 CFR 1.83(a) for failing to show the inner surface of the ergonomic belt configured to allow varied removable attachment of a variety of padded devices of claim 11. Figure 7 and the specification have been amended to clearly indicate the padded features. As the amendments have to the figures only clarify structures already present and claimed in the application, no new matter has been added.
11. Examiner objected to the drawings under 37 CFR 1.83(a) for failing to show the combination of a horizontal track attachment system and vertical plates. Figure 5 has been amended to clearly indicated the combination of a horizontal track system and a vertical plates. As the amendments have to the figures only clarify structures already present and claimed in the application, no new matter has been added.
12. Examiner objected to the drawings because reference character 100 has been used to designate both an ergonomic duty belt and a liner belt. The drawings have been modified to clearly indicate that the reference character 100 indicates the ergonomic duty belt. No new matter has been added.
13. Examiner objected to the drawings because 106 has been used to designate both a body and some portion of the belt. 106 refers to a hook and loop style fastener. The specification as well as the figures have been modified for clarity. No new matter has been added.
14. Examiner objected to the drawings because the following references were not in the drawings as filed; 240, 232, 200, 210, 220, 110, 146, 148, 256, 182, and 172. Corrected drawing sheets as well as specifications have been submitted clearly indicating changes to the specifications or the drawings. No new matter has been added.
15. Examiner objected to the drawings because the following reference characters were not included in the description 176, 178, 130, and 150. The drawings and specifications have been corrected to clearly indicate and clarify the claimed subject matter. No new matter has been added.
16. Examiner objected to the drawings because figures 7, 12, 13, and 14 had no reference labels. Reference labels have been added. As the changes to the figures only clarify structures already present and claimed in the application, no new matter has been added.

17. New claims 22 and 23 have been added. The Examiner indicated that claims 16 and 18 would be allowable if rewritten to overcome the rejections under 112 and to include all of the limitations of the base claim and any intervening claims. Claims 22 and 23 are claims 16 and 18 rewritten to include the limitations of their base claims and any intervening claims.

### **Standards for Patentability**

18. "An applicant for a patent is entitled to the patent unless the application fails to meet the requirements established by law. It is the Commissioner's duty (acting through the examining officials) to determine that all requirements of the Patent Act are met. The burden is on the Commissioner to establish that the applicant is not entitled under the law to a patent .... In rejecting an application, factual determinations by the PTO must be based on a preponderance of the evidence, and legal conclusions must be correct." *In re Oetiker*, 977 F.2d 1443, 1449, 24 USPQ2d 1443, 1447, 24 USPQ2d at 1447 (Fed. Cir. 1992) (Judge Plager concurring).

19. "The precise language of 35 USC 102 that 'a person shall be entitled to a patent unless,' concerning novelty and unobviousness, clearly places a burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103." *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173 (CCPA 1967), cert. denied, 389 U.S. 1057, reh'g denied, 390 U.S. 1000 (1968).

### **Claim Rejections - 35 USC § 102**

20. The Examiner rejected claims 1, 4, 5, and 11 as being anticipated by Thompson et al (6,635,533).

21. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 828 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). MPEP § 2131.

22. Thompson discloses an ergonomic belt with a semi rigid member but does not show a

semi rigid member that goes through the longitudinal axis of the belt. As all the limitations of claim 1 are not shown, claims 4, 5, and 11, which depend upon claim 1, are not anticipated by Thompson.

23. Examiner rejected claims 12,13, 14, 15, 17, and 19 under § 102(b) as being anticipated by Guiboard (US 6,701,534). Claim 12 has been amended to include the limitation that the belt plates be further configured to have a generally flat top and a beveled side edge connected to the belt by a pedestal with a square cross-section. As Guiboard fails to disclose that the belt plates have a generally flat top and a beveled side edge connected to the belt by a pedestal with a square cross-section Guiboard does not teach all the limitations of claim 12. Furthermore, claims 14, 15, 17, and 19, which depend upon claim 12 and contain all of the limitations of claim 12, are not anticipated by Guiboard.

#### ***Claim Rejections - 35 USC § 103***

The Examiner has rejected Claims 2 and 9 as being unpatentable over Thompson in view of Rogers. Thompson is a waist or hip belt to be used on backpacks. The hip belt is a wide band which goes from the user's hips around his back to the lumbar region. In the lumbar region, the waist belt of Thompson is a solid piece of padded material. As the waist belt approaches the hip bone area of the user, the waist belt of Thompson splits into two sections, with a gap between the two sections. The two sections of the belt are held in a spaced apart position by a rigid transverse member, which holds the separate portions of the belt apart and retains a gap or space between the two sections. The purpose of this belt is to transfer weight, such as from a backpack, to the user's hips. The way that the waist belt of the backpack does this is to have at least a portion of the waist belt above the iliac crest part of the hip bone of the user. In this way considerable weight from the backpack can be placed on the user's hips, so that the hips and legs support the weight of the backpack. The purpose of this is to take weight off the shoulder structure of the user, which is much less strong than the user's legs, and is more susceptible to fatigue. The split waist belt of Thompson allows the waist belt to be placed over the user's iliac crest and thus the upper part of the waist belt is above the iliac crest and able to apply downward pressure of the weight of the backpack on to the user's hips.

Rogers is a duty belt for police officers, which is made of an inner belt and an outer belt is approximately the same size as the inner belt, and includes a system for attaching accessories to the outer belt. The inner belt of Rogers is optional as noted in column 2 line 34. When present, the inner belt of Rogers has as its main purpose "the main purpose for inside belt 11 is to provide a secure surface of fabric loops for attachment of track belt 10 which is the next component of this action to be added."

The Examiner notes that Rogers discloses a duty belt with a detachable inner belt 11, which is true. The Examiner further notes that inner belt 11 may fit through the belt loops. Nowhere in the Roger's patent does it state that the inner belt 11 is provided to or capable of fitting through the belt loops of the user's pants.

Claim 9 has been modified to be dependent from claim 2, and thus includes the limitation of the detachable inner belt that goes through the belt loops on the user's pants. Neither Thompson nor Rogers teaches this feature. For these reasons the 103 rejection of Claim 2 and 9 is requested to be withdrawn.

The Examiner has rejected Claims 3 and 6 as being unpatentable over Thompson in view of Eddy. Thompson is the split backpack waist belt described above. Eddy is a support belt for competitive shooters. The support belt of Eddy is made up of an inner belt which is padded and wide, which cinches around the user's waist. The belt of Eddy further includes a narrow outer belt which goes around the outside of the wide and padded inner belt, and provides a structure from which to hang accessory holders such as gun holsters and magazine clips. The belt of Eddy is provided for a specific purpose and that is to provide lower back support and to provide a stable and predictable location for a gun holster to be located, so that the user can more accurately, quickly withdraw and more quickly shoot the gun.

Claim 3 of the current application is dependent from Claim 2 which is dependent from Claim 1. Thus Claim 3 includes the feature of Claim 2 which is that the detachable inner belt goes through the belt loops of the user's pants. The inner belt of Eddy does not and can not do this because it is the wider of the two belts. Having an inner belt which is narrow enough to go through the belt loops of a user's pants is a different way of achieving stability then that chosen by Eddy. There is nothing in Eddy or Thompson which would suggest combining the inner and outer belt of Eddy with the backpack waist belt of Thompson.

In guidance to Examiners concerning 35 U.S.C. § 103(a) analysis, Commissioner Focarino stated that "it remains necessary to identify the reason" why prior art should be combined. More completely, the conclusion of the Memorandum provides the following statement:

"[I]n formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed."

Further the PTO acknowledges that the "teaching, suggestion, or motivation" test "could provide a helpful insight in determining whether the claimed subject matter is obvious

under 35 U.S.C. § 103(a)" but that the "rigid application" of the TSM test had been repudiated.

Commissioner Focarino quoted with approval the statement in *KSR* that various teachings are explored "in order to determine whether there was an *apparent reason* to combine the known [prior art] elements in the fashion claimed by the patent at issue. To facilitate review, the analysis *should be made explicit*." (emphasis added by the PTO.)

The Examiner's rejection based on combining Thompson in view of Eddy does not meet the requirement of providing explicit analysis of the reasons to combine these features. Nor does the Examiner's rejection identify why a person of ordinary skill in the art would combine the prior art elements in the manner claimed. It is not logical to combine the double belt of Eddy with the split belt of a waist band of a back pack of Thompson. The purpose of the split belt of Thompson would be defeated if the gaps in the Thompson belt were filled by a second belt.

Claim 6 was rejected based on a combination of Thompson and Eddy. For the reasons noted above it is not logical to combine the split waist belt of Thompson with the competitive support belt for competitive shooters of Eddy. It would not make sense to have an attachment retaining system on the backpack belt of Thompson, and there is no structure in the Thompson waist belt for the attachment of accessory carries.

The Examiner has rejected Claim 7 as being unpatentable due to the combination of Thompson, Eddy, and Guibord. Thompson and Eddy have been discussed above. Guibord is work tool belt which includes an inner and outer belt. An outer belt has a number tool attachment positions. The inner belt is configured for the comfort of the user and includes a number of vertical channels which allow the inner belt to fold without wrinkling around the user's waist. The Examiner notes that Thompson (the backpack waist belt patent), discloses the structure of Claim 6. Claim 6 is a modification of Claim 1, and adds the feature that the attachment retaining system comprises a strip of attachment material.

There is nothing in Thompson that discloses an attachment retaining system. Thompson is a patent for a backpack waist belt, and is not made to hold containers for accessories. Guibord is referenced due to an attachment retaining system with a plurality of vertically disclosed plates. As modified, Claim 6 depends from Claim 2 which includes the feature of a detachable inner belt which is configured to pass through the belt loops of a user's pants, plus the features described in Claim 1. As Claim 7 depends from Claim 6, the combination of Guibord and Thompson do not sufficiently explain why a person of ordinary skill in the art would have combined these elements in the manner cited. Further, the Examiner's rejection does not meet the requirement of providing sufficient explanation in the analysis.

The Examiner has rejected Claims 8 and 10 as being unpatentable over Thompson in view of Guibord. The Examiner notes that Thompson discloses the structure of Claim 1, but Claim 1 has been modified in this response and at present Thompson does not disclose this structure of Claim 1. The Examiner notes that Thompson combined with Guibord teaches an attachment retaining system with vertically disclosed plates an attachment retaining system such as that of Guibord would not be functional when attached to the backpack waist belt of Thompson. The purpose of the opening between the opening of the two waist belts of Thompson are to provide a structure which fits on the top and bottom of the wearer's iliac crest so that the weight may be transferred to the wearer's hips. It would defeat the purpose of the this unique structure of Thompson to add vertically disclosed plates which would basically close up the gap between the two strands of the split belt of Thompson.

Further, the Examiner's analysis is not sufficiently explicit, and it does not identify the reason that these two prior art references would be combined to contain the features of Claim 8 and 10.

The Examiner has rejected Claim 20 as being unpatentable when Thompson is combined with Guibord, and further in view of Rogers. Thompson is the backpack waist belt with a split and a gap between the splits, Guibord is the work tool belt device and Rogers is the track system with an inner belt an outer belt, each of which have been described above. Claim 20 of the current application includes an inner belt which is configured to pass through the belt loops of user's pants and an ergonomic duty belt with a semi-rigid frame, a plurality of foam layers, and configured to form semi-conically shaped section around the waist of the user. The ergonomic belt for placement outside the inner belt and to carry accessory attachment devices. This is a paraphrasing of Claim 20, but contains most of the essential elements of Claim 20.

These elements are not found in the combination of the three cited patents. The combination of the three cited patents does not include an inner belt which is configured to pass through the belt loops of the user's pants. Further, the combination of an inner belt to the backpacking waist belt of Thomson would defeat the purpose of the the gaps in the waist belt of Thompson, and would not be a functional combination. Although Eddy has an inner belt and an outer belt, neither of those belts are configured to go through the belt loop of a user's pants, and Eddy's ergonomic duty belt is placed against the user's waist, with more narrow accessory attachment belt being placed on the outside of the ergonomic belt. This is just the opposite of the belt design described in Claim 20, and thus Claim 20 is not obvious in view of these three patents. Further, though Rogers is a patent which contains an inner and an outer belt, the inner belt is not configured to go through a user's belt loops. The outer belt of Rogers is provided to supply a rail system for hanging accessories. Since it is the same width as the inner belt it is not provided to act as an ergonomic belt as claimed in Claim 20. For these reasons, the combination of these four patents would not result in a functional product, and not only is there no suggestion

to combine these features, but the combination would defeat the purpose of Thompson, and reverse the design philosophy of Eddy. By filling in the gap of Eddy, the purpose of the gap between the belt pieces would be defeated. By putting the ergonomic belt of Eddy on the outside rather than the inside, the design philosophy of Eddy is reversed. Rogers does not have an ergonomic belt, and there is no suggestion in Rogers to add such a feature. For this reason, this rejection is requested to be withdrawn.

***Conclusion***

If the Examiner feels it would advance the application to allowance or final rejection, the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and allowance of the application as amended is respectfully requested.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ .

Very respectfully,

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\_\_\_\_\_  
[staff]